



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Pacific Gas and Electric
Company in its 2005 Nuclear
Decommissioning Cost Triennial
Proceeding.

(U 39 E)

A. 05-11-009
(Filed November 10, 2005)

REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES

I. INTRODUCTION

Pursuant to Rule 75 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure and the schedule established by the Assigned Commissioner and Administrative Law Judge, the Division of Ratepayer Advocates (“DRA”) hereby files this Reply Brief in the above captioned proceeding.

On June 23, 2006, the parties in this proceeding filed their Opening Briefs. DRA files the instant reply brief addressing PG&E’s opening brief opposing the formation of an Independent Board of Consultants (“IBC”) to oversee the decommissioning costs of Humboldt Bay Unit 3. Simultaneous with this brief, DRA, PG&E, and TURN submit a Joint Reply Brief addressing Mr. Scott Fielder’s opening brief opposing the low level radioactive waste (“LLRW”) burial rate and the Diablo Canyon 35% contingency factor. As such, DRA does not currently address the LLRW burial rates and the contingency factor and limits the scope of the instant brief to addressing PG&E’s opposition to the IBC.

II. THE COMMISSION SHOULD AUTHORIZE THE CREATION OF AN INDEPENDENT BOARD OF CONSULTANTS FOR THE HUMBOLDT BAY NUCLEAR POWER PLANT

DRA supports Mr. Scott Fielder's recommendation to create an IBC to serve as a cost oversight board for PG&E's decommissioning of Humboldt Bay Unit 3. Such a board would be an added mechanism to ensure that PG&E properly spends ratepayer funds for decommissioning activities. In less than 3 years from now, PG&E proposes to spend \$353,000,000 (2004\$) on decommissioning Humboldt Bay Unit 3.¹

In its Opening Brief, PG&E makes several arguments against the formation of an IBC including 1) the IBC is not necessary because there is already full Commission review of PG&E's decommissioning activities, 2) there is nothing unique about PG&E or decommissioning generally that warrants forming an IBC, and 3) there is insufficient information or detail regarding the formation of the proposed IBC.

An IBC is necessary because there are not enough Commission procedures or resources to ensure the cost effectiveness of decommissioning of Humboldt Bay Unit 3. While it is true that the public can participate in Commission proceedings such as the instant NDCTP, no other Commission proceedings will commence prior to the 2009 decommissioning. The before-the-fact review PG&E refers to in its opening brief when it cites D.99-06-007 is the instant NDCTP. As the Commission stated in that decision, "The purpose of the NDCTP is to set the contribution levels for [utilities] Trusts for [a] three year period."² The scope of the NDCTP is very broad and the Commission, DRA, or any other public organization cannot focus on the cost activities of one specific nuclear plant.

The NDCTP occurs every three years, the next one being after PG&E commences its Decommissioning of Humboldt Bay. DRA, which represents the ratepayers and a significant Commission resource regarding cost oversight, will not be able to conduct a

¹ Exh. 11 at 2-3; Exh. 15 at 5.

² D.99-06-007.

before-the-fact analysis of the costs associated with Humboldt Bay's Decommissioning activities. DRA does not have the resources to follow up on this NDCTP until the next proceeding which will be in three years. The procedures and processes that PG&E refers to in its brief are not sufficient to ensure cost effectiveness. An IBC would have independent oversight *concurrent* with the decommissioning, not three years prior or anytime afterwards.

Also, the formation of an IBC is not unprecedented and unfamiliar with the Commission. To the contrary, the Commission has set up IBCs to perform specific or general tasks in many instances including PG&E's Helms Pumped Storage proceeding and the Diablo Canyon Independent Safety Committee (DCISC). In addition, the legislature, through the Public Utilities Code, encourages and sets forth the need to have IBCs. Public Utilities Code § 1092 requires the Commission to appoint a board of consultants for projects where a gas or electric utility constructs, modifies electric or gas plants. Although section 1092 does not mandate an IBC for the decommissioning of a Nuclear Plant, it refutes PG&E's argument that an IBC is unprecedented. Contrary to PG&E's assertion, section 1092 illustrates the need for IBCs for complex activities such as nuclear decommissioning. DRA reminds the Commission that the decommissioning of nuclear plants is complex and in this particular instance of Humboldt Bay thus far has an estimated cost of \$350,000,000. Another factor that warrants an IBC is the fact that the trust funds are currently under-funded and PG&E will not be able to spend more than the estimated \$350,000,000 without imposing a huge burden on ratepayers.

The IBC is warranted because PG&E has never carried out the task of decommissioning and oversight is needed for a project where over \$350,000,000 will be spent. The \$700,000 annual cost of establishing and maintaining an IBC is miniscule compared to the figure of \$350,000,000 that PG&E intends to spend on decommissioning Humboldt Bay. DRA questions why PG&E is so opposed to the notion of establishing an IBC whose only function is to REPORT cost activity and will not have management authority.

PG&E states that the Commission did not appoint an IBC for Southern California Edison's ("SCE") decommissioning of San Onofre Unit 1 ("SONGS 1"). DRA reminds the Commission that SCE did not complete the decommissioning for SONGS 1. The SONGS 1 reactor vessel is now stored on site, as opposed to SCE's plan to have it transported for burial in Barnwell, South Carolina. Therefore, an IBC would have been beneficial to SCE and its ratepayers and may have led to a completion of its decommissioning activities.

While true that the specific details and functionality of the IBC have been left undefined thus far, its purpose is very clear: to ensure cost-effectiveness and cost-management of the decommissioning trust and decommissioning activities. DRA stands behind the purpose of the IBC because it has significant interests to protect ratepayer funds from being imprudently or improperly spent. With such a defined purpose, the Commission should decide the details of the functionality.

Also, DRA, in its opening brief, provided details of the functionality of the IBC such as reviewing PG&E's decommissioning plans and schedules, preparing periodic public reports on decommissioning activities, highlighting cost containment opportunities, and providing information to the public. Further, it is currently premature to delve into the details of the IBC as the Commission must first decide whether to form an IBC. If the Commission decides to form the IBC, then parties can assist the Commission in determining the details. There is guidance for the Commission vis-à-vis Public Utilities Code §§ 1091-1102, where there the legislature discusses the formation, functionality, and duties of an IBC.

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III. CONCLUSION

All in all, contrary to PG&E's assertions, a need exists for an IBC for PG&E's decommissioning of Humboldt Bay. An IBC comes at little cost and risk to both PG&E and the ratepayers. The IBC will be an oversight board and not cause any time delays. In fact, it may expedite the process because it will be an additional resource with expertise for PG&E to rely on. DRA respectfully requests that the Commission approve the formation of an IBC.

Respectfully submitted,

/s/ RASHID A. RASHID

Rashid A. Rashid
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone No.: (415) 703-2705
Fax No.: (415) 703-4432
E-mail: rhdc@cpuc.ca.gov

July 14, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES**” in **A.05-11-009** by using the following service:

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Executed in San Francisco, California, on the **14th** day of **July, 2006**.

/s/ **MARTHA PEREZ**

Martha Perez

N O T I C E

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SERVICE LIST

carol.schmidfrazee@sce.com
Jennifer.Shigekawa@sce.com
jwalsh@sempa.com
uwua@redhabanero.com
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